IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.4431 OF 2005

Vijay S/o. Namdeo Jadhav ...Applicant
vs.
State of Maharashtra ...Respondent

Mr.P.M.Chakurkar for the Applicant
Ms M.H.Mhatre,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : AUGUST 29,2005

P.C.:

1. Heard the learned Counsel for the Applicant and the learned A.P.P. for State. This is an application for bail under Section 439 of the Code of Criminal Procedure, 1973. The offence alleged against the Applicant is under Sections 302, 364,201, 34 of the Indian Penal Code.

2. The Application for bail made by the Applicant has been rejected by the II Ad hoc Additional Sessions Judge, Kalyan. During the course of hearing on the last date it was brought to my notice that the prosecution is relying upon the extra judicial confession allegedly made by the Applicant before one Gopal V. Bhagat, Advocate. It was brought to my notice that the same Advocate before whom the extra judicial confession of the Applicant was allegedly recorded, filed the bail application in the Sessions Court on behalf of the Applicant and the same Advocate argued the bail application before the Sessions Court. The learned A.P.P. on instructions of the Investigating Officer stated that the prosecution is relying

upon the said extra judicial confession. Perusal of the order dated 29th June 2005 by the Sessions Court shows that the prosecution has relied upon the said extra judicial confession.

3. The learned Advocate for the Applicant and the learned A.P.P. on instructions stated that Shri G.V.Bhagat filed Vakalatnama in the bail application filed by the Applicant and he argued the bail application on behalf of the Applicant. The certified copy of Vakalatnama filed in the Sessions Court is placed on record by the Advocate appearing for the Applicant.

4. If the prosecution is relying upon the extra judicial confession recorded before the said Advocate, it is obvious that the said Advocate is likely to be a prosecution witness. Notwithstanding this position, the said Advocate filed bail application and argued the same. It is surprising that even the learned Ad hoc Additional Sessions Judge allowed the said Advocate to argue the said application. As the prosecution is specifically relying upon the extra judicial confession recorded before the same Advocate, it is obvious that a prejudice has been caused to the Applicant as his bail application before the Sessions Court was argued by the Advocate who, at this stage, appears to be a prosecution witness. Rule 13 of the Rules of the Bar Counsel of India

framed under Section 49 (1)(c) of the Advocates Act, 1961 makes the position very clear. In my view, the order passed by the learned II Ad hoc Additional Sessions Judge deserves to be set aside only on this ground. The application made by the Applicant deserves to be considered afresh. The Bar Council of Maharashtra and Goa will have to take a note of the facts which are on record of this Application.

4. Hence I pass the following order :

i) The order dated 29th June 2005 passed by the II Ad hoc Additional Sessions Judge is quashed and set aside and the a bail application filed by the Applicant in Sessions Case No.95 of 2005 is restored.

ii)The learned II Ad hoc Additional Sessions Judge will decide the application afresh in accordance with law. It is obvious that the Advocate before whom the extra judicial confession is recorded will not be entitled to appear in the Application on behalf of Applicant.

iii) All contentions of the parties are kept open.
iv) A copy of this order be forwarded to the Secretary of the Bar Counsel of Maharashtra and Goa for necessary action. It is made clear that the Bar Council is free to make its own inquiry. The observations which are made in this order are

only prima facie observations.

v) Parties to act upon an authenticated copy of this order.

JUDGE